

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JOSE HUERTA, VINICIO MERA, and JOSE FLOREZ, Civ. Action. No. 7:23-cv-05382-KMK
ELVIA BORJA, individually and on behalf of all others
similarly situated,

Plaintiffs,

-against-

**ANSWER TO AMENDED
COMPLAINT WITH
AFFIRMATIVE DEFENSES AND
CROSS-CLAIM**

J.D. WORKFORCE, INC., MARAV USA LLC d/b/a
BINGO WHOLESALE, HAMWATTIE BISSOON,
STEVEN DEANE, and DAVID WEISS

Defendants.

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Defendants MARAV USA LLC d/b/a BINGO WHOLESALE (“Bingo Wholesale”) and DAVID WEISS (“Weiss”) (collectively referred to as “Bingo Defendants”) by their attorneys, Allyn & Fortuna LLP, submit their Answer to the Amended Complaint (the “Amended Complaint”) brought by plaintiffs JOSE HUERTA, VINICIO MERA, JOSE FLOREZ, and ELVIA BORJA (collectively referred to as “Plaintiffs”) as follows:

I. Nature Of Action, Jurisdiction, and Venue

1. Bingo Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “1” of the Amended Complaint.
2. Bingo Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “2” of the Amended Complaint and respectfully refer all questions of jurisdiction under 28 U.S.C. § 1331 to this Court for determination.
3. Bingo Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “3” of the Amended Complaint and respectfully refer all questions of supplemental jurisdiction to this Court for determination.

4. Bingo Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “4” of the Amended Complaint and respectfully refer all questions of venue under 28 U.S.C. § 1391 to this Court for determination.

5. Bingo Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “5” of the Amended Complaint.

6. Bingo Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “6” of the Amended Complaint.

II. Parties

7. Bingo Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “7” of the Amended Complaint.

8. Bingo Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “8” of the Amended Complaint.

9. Bingo Defendants deny the truth of the allegations set forth in Paragraph “9” of the Amended Complaint.

10. Bingo Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “10” of the Amended Complaint.

11. Bingo Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “11” of the Amended Complaint.

12. Bingo Defendants admit the truth of the allegations contained in Paragraph “12” of the Amended Complaint.

13. Bingo Defendants admit the truth of each allegation contained in Paragraph “13” of the Amended Complaint.

14. Bingo Defendants deny the truth of each allegation contained in Paragraph “14” of the Amended Complaint.

15. Bingo Defendants admit Weiss resides in New York and deny knowledge and information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph “15” of the Amended Complaint.

16. Bingo Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “16” of the Amended Complaint.

17. Bingo Defendants deny the truth of the allegations contained in Paragraph “17” of the Amended Complaint.

18. Bingo Defendants deny the truth of each allegation contained in Paragraph “18” of the Amended Complaint.

19. Bingo Defendants deny the truth of each allegation contained in Paragraph “19” of the Amended Complaint.

20. Bingo Defendants deny the truth of each allegation contained in Paragraph “20” of the Amended Complaint.

21. Bingo Defendants deny the truth of each allegation contained in Paragraph “21” of the Amended Complaint.

22. Bingo Defendants deny the truth of each allegation contained in Paragraph “22” of the Amended Complaint.

23. Bingo Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph “23” of the Amended Complaint.

24. Bingo Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “24” of the Amended Complaint.

25. Bingo Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “25” of the Amended Complaint.

26. Bingo Defendants deny the truth of the allegations set forth in Paragraph “26” of the Amended Complaint.

III. FLSA Collective Action Allegations

27. Bingo Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “27” of the Amended Complaint.

28. Bingo Defendants deny the truth of the allegations contained in Paragraph “28” of the Amended Complaint.

29. Bingo Defendants deny the truth of the allegations contained in Paragraph “29” of the Amended Complaint.

30. Bingo Defendants deny the truth of the allegations contained in Paragraph “30” of the Amended Complaint.

31. Bingo Defendants deny the truth of the allegations contained in Paragraph “31” of the Amended Complaint.

32. Bingo Defendants deny the truth of the allegations contained in Paragraph “32” of the Amended Complaint.

IV. Rule 23 Class Allegations

33. Bingo Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “33” of the Amended Complaint.

34. Bingo Defendants deny the truth of the allegations contained in Paragraph “34” of the Amended Complaint.

35. Bingo Defendants deny the truth of the allegations contained in Paragraph “35” of the Amended Complaint.

36. Bingo Defendants deny the truth of the allegations contained in Paragraph “36” of the Amended Complaint.

37. Bingo Defendants deny the truth of the allegations contained in Paragraph “37” of the Amended Complaint.

38. Bingo Defendants deny the truth of the allegations contained in Paragraph “38” of the Amended Complaint.

39. Bingo Defendants deny the truth of the allegations contained in Paragraph “39” of the Amended Complaint.

40. Bingo Defendants deny the truth of the allegations contained in Paragraph “40” of the Amended Complaint.

41. Bingo Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph “41” of the Amended Complaint.

42. Bingo Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph “42” of the Amended Complaint.

43. Bingo Defendants deny the truth of the allegations contained in Paragraph “43” of the Amended Complaint.

V. Factual Allegations

Huerta

44. Bingo Defendants deny the truth of the allegations set forth in Paragraph “44” of the Amended Complaint.

45. Bingo Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “45” of the Amended Complaint.

46. Bingo Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “46” of the Amended Complaint.

47. Bingo Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “47” of the Amended Complaint.

48. Bingo Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “48” of the Amended Complaint.

49. Bingo Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “49” of the Amended Complaint.

50. Bingo Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “50” of the Amended Complaint.

51. Bingo Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “51” of the Amended Complaint.

52. Bingo Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “52” of the Amended Complaint.

53. Bingo Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “53” of the Amended Complaint.

54. Bingo Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “54” of the Amended Complaint.

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56. Bingo Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “56” of the Amended Complaint.

57. Bingo Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph “57” of the Amended Complaint.

58. Bingo Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “58” of the Amended Complaint.

59. Bingo Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “59” of the Amended Complaint.

60. Bingo Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “60” of the Amended Complaint.

61. Bingo Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “61” of the Amended Complaint.

62. Bingo Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “62” of the Amended Complaint.

63. Bingo Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “63” of the Amended Complaint.

Mera

64. Bingo Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “64” of the Amended Complaint.

65. Bingo Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph “65” of the Amended Complaint.

66. Bingo Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph “66” of the Amended Complaint.

67. Bingo Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “67” of the Amended Complaint.

68. Bingo Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “68” of the Amended Complaint.

69. Bingo Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “69” of the Amended Complaint.

Florez

70. Bingo Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “70” of the Amended Complaint.

71. Bingo Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “71” of the Amended Complaint.

72. Bingo Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph “72” of the Amended Complaint.

73. Bingo Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph “73” of the Amended Complaint.

74. Bingo Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “74” of the Amended Complaint.

Borja

75. Bingo Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “75” of the Amended Complaint.

76. Bingo Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “76” of the Amended Complaint.

77. Bingo Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph “77” of the Amended Complaint.

78. Bingo Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph “78” of the Amended Complaint.

79. Bingo Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “79” of the Amended Complaint.

80. Bingo Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “80” of the Amended Complaint.

81. Bingo Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “81” of the Amended Complaint.

82. Bingo Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph “82” of the Amended Complaint.

83. Bingo Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph “83” of the Amended Complaint.

84. Bingo Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “84” of the Amended Complaint.

85. Bingo Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph “85” of the Amended Complaint.

86. Bingo Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “86” of the Amended Complaint.

All Plaintiffs

87. Bingo Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “87” of the Amended Complaint.

88. Bingo Defendants deny the truth of the allegations contained in Paragraph “88” of the Amended Complaint.

89. Bingo Defendants deny the truth of the allegations set forth in Paragraph “89” of the Amended Complaint.

90. Bingo Defendants deny the truth of the allegations contained in Paragraph “90” of the Amended Complaint.

91. Bingo Defendants deny the truth of the allegations contained in Paragraph “91” of the Amended Complaint.

92. Bingo Defendants deny the truth of the allegations set forth in Paragraph “92” of the Amended Complaint.

93. Bingo Defendants deny the truth of the allegations contained in Paragraph “93” of the Amended Complaint.

94. Bingo Defendants deny the truth of the allegations contained in Paragraph “94” of the Amended Complaint.

**AS AND FOR A FIRST CAUSE OF ACTION ON BEHALF
OF PLAINTIFFS, INDIVIDUALLY, AND THE FLSA
COLLECTIVE PLAINTIFFS**

(Overtime Violations under the Fair Labor Standards Act)

95. Bingo Defendants reallege and incorporate by reference their answers to Paragraphs “1” to “94” of the Amended Complaint as if set forth herein.

96. Bingo Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph “96” of the Amended Complaint.

97. Bingo Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph “97” of the Amended Complaint.

98. Bingo Defendants deny the truth of the allegations contained in Paragraph “98” of the Amended Complaint.

99. Bingo Defendants deny the truth of the allegations contained in Paragraph “99” of the Amended Complaint.

100. Bingo Defendants deny the truth of the allegations contained in Paragraph “100” of the Amended Complaint.

101. Bingo Defendants deny the truth of the allegations contained in Paragraph “101” of the Amended Complaint.

**AS AND FOR A SECOND CAUSE OF ACTION
ON BEHALF OF PLAINTIFFS, INDIVIDUALLY,
AND THE CLASS**

(Overtime Violations under the NYLL)

102. Bingo Defendants reallege and incorporate by reference their answers to Paragraphs “1” to “101” of the Amended Complaint as if set forth herein.

103. Bingo Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph “103” of the Amended Complaint.

104. Bingo Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph “104” of the Amended Complaint.

105. Bingo Defendants deny the truth of the allegations contained in Paragraph “105” of the Amended Complaint.

106. Bingo Defendants deny the truth of the allegations contained in Paragraph “106” of the Amended Complaint.

107. Bingo Defendants deny the truth of the allegations contained in Paragraph “107” of the Amended Complaint.

108. Bingo Defendants deny the truth of the allegations contained in Paragraph “108” of the Amended Complaint.

**AS AND FOR A THIRD CAUSE OF ACTION ON
BEHALF OF PLAINTIFFS, INDIVIDUALLY,
AND THE CLASS**

(Failure to Timely Pay Wages in Violation of the NYLL)

109. Bingo Defendants reallege and incorporate by reference their answers to Paragraphs “1” to “109” of the Amended Complaint as if set forth herein.

110. Bingo Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph “110” of the Amended Complaint and respectfully refer all questions under NYLL § 191(1)(a)(i) to this Court for interpretation.

111. Bingo Defendants deny the truth of the allegations contained in Paragraph “111” of the Amended Complaint.

112. Bingo Defendants deny the truth of the allegations contained in Paragraph “112” of the Amended Complaint.

113. Bingo Defendants deny the truth of the allegations contained in Paragraph “113” of the Amended Complaint.

114. Bingo Defendants deny the truth of the allegations contained in Paragraph “114” of the Amended Complaint.

115. Bingo Defendants deny the truth of the allegations contained in Paragraph “115” of the Amended Complaint.

**AS AND FOR A FOURTH CAUSE OF ACTION
ON BEHALF OF PLAINTIFFS, INDIVIDUALLY, AND
THE CLASS**

(Failure to Provide Payroll Notices under NYLL)

116. Bingo Defendants reallege and incorporate by reference their answers to Paragraphs “1” to “115” of the Amended Complaint as if set forth herein.

117. Bingo Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph “117” of the Amended Complaint.

118. Bingo Defendants deny the truth of the allegations contained in Paragraph “118” of the Amended Complaint.

119. Bingo Defendants deny the truth of the allegations contained in Paragraph “119” of the Amended Complaint.

AS AND FOR A FIFTH CAUSE OF ACTION
ON BEHALF OF PLAINTIFFS, INDIVIDUALLY,
AND THE CLASS

(Failure to Provide Wage Statements under NYLL)

120. Bingo Defendants reallege and incorporate by reference their answers to Paragraphs “1” to “119” of the Amended Complaint as if set forth herein.

121. Bingo Defendants deny the truth of the allegations contained in Paragraph “121” of the Amended Complaint.

122. Bingo Defendants deny the truth of the allegations contained in Paragraph “122” of the Amended Complaint.

123. Bingo Defendants deny the truth of the allegations contained in Paragraph “123” of the Amended Complaint.

AS AND FOR A SIXTH CAUSE OF ACTION
ON BEHALF OF HUERTA
(Americans with Disabilities Act of 1990)
(Disability Discrimination and Failure to Accommodate)

124. Bingo Defendants reallege and incorporate by reference their answers to Paragraphs “1” to “123” of the Amended Complaint as if set forth herein.

125. Bingo Defendants respectfully refer all questions and interpretations of the ADA to this Court for determination.

126. Bingo Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph “126” of the Amended Complaint.

127. Bingo Defendants deny the truth of the allegations contained in Paragraph “127” of the Amended Complaint.

128. Bingo Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph “128” of the Amended Complaint.

129. Bingo Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph “129” of the Amended Complaint.

130. Bingo Defendants deny the truth of the allegations contained in Paragraph “130” of the Amended Complaint.

131. Bingo Defendants deny the truth of the allegations contained in Paragraph “131” of the Amended Complaint.

132. Bingo Defendants deny the truth of the allegations contained in Paragraph “132” of the Amended Complaint.

133. Bingo Defendants deny the truth of the allegations contained in Paragraph “133” of the Amended Complaint.

134. Bingo Defendants deny the truth of the allegations contained in Paragraph “134” of the Amended Complaint.

**AS AND FOR A SEVENTH CAUSE OF ACTION
ON BEHALF OF HUERTA**

*(New York State Human Rights Law, Executive Law §290 et seq.)
(Disability Discrimination and Failure to Accommodate)*

135. Bingo Defendants reallege and incorporate by reference their answers to Paragraphs “1” to “134” of the Amended Complaint as if set forth herein.

136. Bingo Defendants respectfully refer all questions and interpretations of NYSHRL to this Court for determination.

137. Bingo Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph “137” of the Amended Complaint.

138. Bingo Defendants deny the truth of the allegations contained in Paragraph “138” of the Amended Complaint.

139. Bingo Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph “139” of the Amended Complaint.

140. Bingo Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph “140” of the Amended Complaint.

141. Bingo Defendants deny the truth of the allegations contained in Paragraph “141” of the Amended Complaint.

142. Bingo Defendants deny the truth of the allegations contained in Paragraph “142” of the Amended Complaint.

143. Bingo Defendants deny the truth of the allegations contained in Paragraph “143” of the Amended Complaint.

144. Bingo Defendants deny the truth of the allegations contained in Paragraph “144” of the Amended Complaint.

145. Bingo Defendants deny the truth of the allegations contained in Paragraph “145” of the Amended Complaint.

AS TO PRAYER FOR RELIEF

Bingo Defendants deny that Plaintiffs are entitled to recover the relief sought in Plaintiffs’ “prayer for relief” under subparagraphs “a” through “i”.

DEFENDANTS’ AFFIRMATIVE AND OTHER DEFENSES

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

1. The Amended Complaint fails to state a claim against Bingo Defendants based upon failure to pay minimum wage to Plaintiffs in violation of The Fair Labor Standards Act, 29 U.S.C. §§ 201 et seq. (“FLSA”) upon which relief may be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

2. The Amended Complaint fails to state a cause of action against Bingo Defendants for failure to pay minimum wages in violation of New York Labor Law (“NYLL”) and supporting regulations.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

3. The Amended Complaint fails to state a claim against Bingo Defendants based upon failure to pay overtime wages to Plaintiff in violation of The Fair Labor Standards Act, 29 U.S.C. §§ 201 et seq. (“FLSA”) and/or New York Labor Law (“NYLL”) upon which relief may be granted.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

4. The Amended Complaint fails to state a cause against Bingo Defendants for failure to provide proper wage statements in violation of the NYLL Section 190 et seq.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

5. The Amended Complaint fails to state a cause of action against Bingo Defendants pursuant to NYLL for failure to provide proper annual wage notices under NYLL Article 6 Section 195 (1) and supporting regulations.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

6. Some or all of Plaintiffs’ claims are barred by the applicable statute of limitations.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

7. The Amended Complaint fails to state any cause of action upon which relief may be granted as against Bingo Defendants.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

8. The Amended Complaint fails to state a cause of action against Bingo Defendants pursuant to NYLL that would entitle Plaintiff to the relief afforded under NYLL § 198.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

9. The Amended Complaint fails to state a cause of action against Bingo Defendants for discrimination or failure to accommodate under the Americans with Disabilities Action of 1990, the New York State Human Rights Law and/or other applicable laws.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

10. The Amended Complaint fails to allege any facts evidencing that Bingo Defendants had knowledge of any alleged disability of Huerta or of any alleged request of an accommodation under Americans with Disabilities Action of 1990, the New York State Human Rights Law, and or other applicable laws.

AS AND FOR A ELEVENTH AFFIRMATIVE DEFENSE

11. Any acts or omissions on the part of Bingo Defendants, which Bingo Defendants deny occurred, were in good faith, and Bingo Defendants had reasonable grounds for believing that any such act or omission was not a violation of any applicable law and/or regulation, including the NYLL, FLSA, ADA or NYSHRL.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

12. Plaintiffs were paid properly under all applicable labor laws, wage and hour laws and regulations.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

13. Plaintiffs are barred, in whole or in part, by the doctrine of laches, estoppel, waiver, release and/or equitable defenses.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

14. Plaintiffs' claims are barred, in whole or in part, by doctrine of unclean hands.

AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE

15. Plaintiffs cannot establish a willful violation under the NYLL.

AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE

16. Plaintiffs' claims under the New York Labor Law may not be maintained because Plaintiffs were paid properly pursuant to New York Labor Laws and the applicable regulations of the New York State Department of Labor.

AS AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE

17. This Court should decline to exercise supplemental jurisdiction over the state law claims under 28 U.S.C. §§ 1367 et seq.

AS AND FOR AN EIGHTEENTH AFFIRMATIVE DEFENSE

18. The Amended Complaint fails to state a claim of willful violations under the FLSA.

AS AND FOR A NINETEENTH AFFIRMATIVE DEFENSE

19. Plaintiffs cannot demonstrate that they were entitled to compensation from Bingo Defendants or that they were not properly compensated by Bingo Defendants in violation of the FLSA, New York Labor Law and/or other applicable laws.

AS AND FOR A TWENTIETH AFFIRMATIVE DEFENSE

20. Bingo Defendants are not employers under NYLL, FLSA, ADA or NYSHRL.

AS AND FOR A TWENTY-FIRST AFFIRMATIVE DEFENSE

21. Plaintiffs cannot recover liquidated damages under both NYLL and FLSA because such relief would amount to a "double recovery."

AS AND FOR A TWENTY-SECOND AFFIRMATIVE DEFENSE

22. Plaintiffs cannot demonstrate that Bingo Defendants engaged in any common scheme, practice or policy with each other or other named defendants.

AS AND FOR A TWENTY-THIRD AFFIRMATIVE DEFENSE

23. Plaintiffs cannot demonstrate that Bingo Defendants engaged in any common scheme, practice or policy that violates the FLSA, NYLL or applicable regulations.

AS AND FOR A TWENTY-FOURTH AFFIRMATIVE DEFENSE

24. The Amended Complaint is barred, in whole or in part, because it requests relief which exceeds that available under applicable law.

AS AND FOR A TWENTY-FIFTH AFFIRMATIVE DEFENSE

25. In addition to the foregoing defenses, Bingo Defendants retain the right to amend their Answer to raise additional affirmative and other defenses or pursue any available counterclaims against Plaintiffs as those claims become known during this litigation.

**CROSSCLAIM DIRECTED TO
DEFENDANT J.D. WORKFORCE, INC**

1. Answering Bingo Defendants incorporate the allegations in Plaintiffs' Amended Complaint, without admission or adoption, as if set forth herein at length.

2. Answering Bingo Defendants incorporate paragraphs 1 through 27 of its Answer as if set forth herein.

3. For all relevant time periods alleged in the Amended Complaint, Bingo Wholesale had an employment agency agreement to which a company would supply skilled temporary workers.

4. Beginning in 2018 Bingo Defendants and Defendant JD Workforce, Inc. ("JD Workforce") entered into an Employment Agency Agreement pursuant to which JD Workforce supplied skilled temporary workers (the "Agreement")¹.

5. That Plaintiffs were employees of JD Workforce and covered by the Agreement.

6. Pursuant to the Agreement, JD Workforce is obligated to indemnify, defend and hold harmless answering Bingo Defendants from all liability, losses, obligations, damages, fees, costs and expenses in this matter.

¹ Prior to 2018, Bingo Wholesale had an employment agency agreement with JD Workforce's predecessor in interest. JD Workforce is responsible for all relevant time periods alleged in the Amended Complaint stemming back to 2016.

7. Further, pursuant to the Agreement JD Workforce supplied workers (the “Workforce Employees”) to Bingo Wholesale and JD Workforce was at all times the sole employer of the Workforce Employees.

8. Pursuant to the Agreement JD Workforce was responsible for, among other things, hiring, maintaining payroll, calculating wages and withholding taxes, and complying with all applicable federal and local laws and regulations applicable to Workforce Employees.

9. Pursuant to the Agreement Bingo Defendants had no control over the manner, method, or means by which the Workforce Employees performed their services, all was determined by JD Workforce.

10. Pursuant to the Agreement, JD Workforce further agreed to indemnify Bingo Defendants in connection with JD Workforce’s failure to comply with any federal, state, and local law applicable to Workforce Employees and for claims that arise or are in any way connected with work performed by Workforce Employees, materials furnished, or services provided to the Workforce Employees supplied by JD Workforce.

11. Plaintiffs have filed this Action against Bingo Defendants alleging claims for, *inter alia*, violations of the FLSA, NYLL, ADA and NYSHRL, all of which arise from conduct constituting an alleged breach by JD Workforce of its obligations under the Agreement with Bingo Defendants.

12. That Bingo Defendants have at all times fulfilled their obligations under the Agreement with JD Workforce.

13. That Bingo Defendants have been caused to suffer damages as a result of being named as defendants in this Action and have incurred significant attorneys’ fees and other expenses.

14. If the Plaintiffs prevail on their claims against Bingo Defendants and recover monetary or other relief, such recovery will have been caused by reason of JD Workforce’s breach of the Agreement.

15. As a result of such breach by JD Workforce, Bingo Defendants are entitled to be indemnified and held harmless against all liability, losses, claims, and expenses, including any monetary judgment entered against them, and their reasonable attorney's fees, arising from this action.

WHEREFORE, Defendants MARAV USA LLC d/b/a BINGO WHOLESALE and DAVID WEISS deny liability and demand that JD Workforce comply with all provisions of the Agreement and defend, indemnify and hold harmless answering Bingo Defendants from and against all liability, losses, damages, claims, legal fees, and expenses arising from this action. Bingo Defendants further demand damages arising from Plaintiffs' claims for any breach of contract by JD Workforce, including all applicable contract remedies. Bingo Defendants demand judgment in their favor on this crossclaim, including judgment for full indemnification, together with pre-judgment and post-judgment interest, costs, legal fees, expenses and such other relief that this Court deems proper.

JURY DEMAND

Bingo Defendants hereby demand a trial by jury as to all issues so triable.

Dated: October 31, 2023
New York, New York

ALLYN & FORTUNA LLP

By: _____ /S/
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TO:

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